

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ALONZO HOYE	PETITIONER
v.	CIVIL ACTION NO. 5:18cv114-DCB-FKB
SCOTT MIDDLEBROOKS	RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on Magistrate Judge F. Keith Ball's Report and Recommendation [ECF No. 15], to which no objections have been filed. Having carefully reviewed the same, the Court finds the Report and Recommendation to be well taken and hereby adopts it as the findings and conclusions of this Court.

In his Petition for Writ of Habeas Corpus Alonzo Hoyer ("Hoyer") challenges the Mississippi Department of Corrections ("MDOC")'s calculation of his Earned Release Supervision ("ERS") date. Hoyer brings his Petition pursuant to 28 U.S.C. § 2254, which requires a petitioner who is in custody pursuant to a state court judgment to exhaust the remedies available in the courts of the State. Hoyer is in custody pursuant to a state court judgment as he pleaded guilty to two counts of simple robbery in the Circuit Court of Adams County, Mississippi. Magistrate Judge Ball found:

"Petitioner has never presented these claims to the state court, and no relief would now be available because the thirty-day period to seek judicial review of an adverse decision rendered by the ARP [Administrative Relief Program] has now run. See Miss. Code Ann. § 47-5-807 (2019). Thus, Petitioner has technically exhausted his state court remedies on these claims, see Sones v. Hargett, 61 F.3d 410, 415-416 (5th Cir. 1995), and they would now be procedurally barred in state court. A federal court may not review the merits of a procedurally-barred claim absent a showing either of cause for the default and actual prejudice or that failure to address the claim would result in a miscarriage of justice. Id."

[ECF No. 15] at 4. This Court agrees with the Report and Recommendation and finds that the Petitioner has failed to show cause for the default as the Petitioner is very familiar with the ARP program. Additionally, the Court agrees that the merits of the claim are wholly without merit.

Accordingly,

IT IS HEREBY ORDERED AND ADJUDGED that the Court ADOPTS Magistrate Judge F. Keith Ball's Report and Recommendation [ECF No. 15] as the findings and conclusions of this Court.

IT IS FURTHER ORDERED that the Respondent's Motion to Dismiss [ECF No. 9] is hereby GRANTED and the Petition for Writ of Habeas Corpus [ECF No. 1] is DISMISSED WITH PREJUDICE.

A final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure shall be entered on an even date herewith.

SO ORDERED this the 10th day of March, 2020.

/s/ David Bramlette

UNITED STATES DISTRICT COURT